

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 85739-001

v

Blue Cross Blue Shield of Michigan
Respondent

**Issued and entered
this 28th day of December 2007
by Ken Ross
Acting Commissioner**

ORDER

I

PROCEDURAL BACKGROUND

On October 12, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The initial request was incomplete. After additional information was provided the Commissioner reviewed the material submitted and accepted the request on November 1, 2007.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on November 15, 2007.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) through the Michigan Education Special Services Association (MESSA). Coverage is

governed by the MESSA Choice II certificate of coverage. On July 3, 2007, the Petitioner underwent a panniculectomy (removal of hanging fat and skin). BCBSM declined to pay for this care.

The Petitioner appealed BCBSM's failure to pay for her surgery. After a managerial-level conference on August 21, 2007, BCBSM did not change its decision and issued a final adverse determination dated August 31, 2007.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's July 3, 2007 panniculectomy?

IV ANALYSIS

Petitioner's Argument

The Petitioner provided a number of letters from her doctors that indicated that she has suffered for a number of years from multiple injuries and other problems including low back pain. She had a relatively large fatty apron, having lost a significant amount of weight. She had residual tissue that required removal to help her lumbar pain. Her surgery to remove the excess tissue from the front part of her abdomen has been very beneficial to her. Her doctors believe that this care was medically necessary. The Petitioner argues that this surgery is a covered benefit and BCBSM is required to pay for it.

BCBSM's Argument

Under the terms of the certificate, a service must be medically necessary in order to be covered. In the Petitioner's case, she did not meet the medical necessity criteria for panniculectomy surgery. BCBSM's medical consultants reviewed the information submitted and determined that the documentation did not support the medical necessity of this surgery.

Commissioner's Review

The Certificate sets forth the benefits that are covered. Section 7 of the Certificate,

Coverage for Physician and Other Professional Provider Services, states that all services must be medically necessary to be covered. The Certificate, in Section 1, indicates that physician services will be paid when “[t]he covered service is accepted as necessary and appropriate for the patient’s condition” and “is not mainly for the convenience of the member or physician.”

The question of whether the Petitioner’s panniculectomy surgery is medically necessary for treatment of the Petitioner’s condition was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer is a physician who is board-certified in plastic surgery, holds an academic appointment, and has been in practice for more than ten years.

The reviewer noted that there were no photographs provided for review in this case. A letter in the file material dated February 26, 2007 reported that the Petitioner had a lower abdominal pannus that hung down to the pubic area. The information in the case file does not document the presence of intertrigo, rashes, or skin ulcerations. The reviewer also indicated that a panniculectomy is not an accepted treatment for back or leg pain. Therefore, the reviewer concluded that a panniculectomy was not medically necessary for treatment of the Petitioner’s condition.

The Commissioner is not required in all instances to accept the IRO’s recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite “the principal reason or reasons why the commissioner did not follow the assigned independent review organization’s recommendation.” MCL 550.1911(16) (b). The IRO’s analysis is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO that the Petitioner’s panniculectomy surgery was not medically necessary.

V ORDER

Respondent BCBSM’s August 31, 2007, final adverse determination is upheld. BCBSM is

not required to cover the Petitioner's panniculectomy surgery provided on July 3, 2007 since it was not medically necessary.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.